UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA RISING TOGETHER, INC.,

Plaintiff,

v. Civil Case No. 6:24-cv-01682-WB-EJK

CORD BYRD, in his official capacity as Secretary of State for the State of Florida, *et al.*,

Defendants.

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SECRETARY OF STATE CORD BYRD'S MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW

Defendant, Cord Byrd, in his official capacity as Secretary of State of the State of Florida, moves to dismiss Plaintiff's Complaint (DE 1) for lack of standing under Federal Rule of Civil Procedure 12(b)(1) and failure to state a claim under Rule 12(b)(6).

Since 2006, Florida law has required that applicants with a Florida driver license, Florida identification card, or Social Security number provide their number(s) on their voter registration applications. § 97.053(5)(a), Fla. Stat.; *cf.* 52 U.S.C. § 21083(a)(5)(A)(i).[1] The Florida Department of State then verifies that information by comparing it to the applicants' numbers on file with the Florida Department of Highway Safety and Motor Vehicles ("DHSMV") or the Social Security Administration. § 97.053(6), Fla. Stat. (the "voter verification statute").

[1] Those without a Florida driver license, Florida ID card, or Social Security number may still register to vote. They need only "affirm this fact in the manner prescribed in the uniform statewide voter registration application." § 97.053(5)(a)5., Fla. Stat. That fact is also verified.

If the numbers do not match, applicants must verify their information by presenting their driver license, ID card, or Social Security card to the supervisor of elections in person or by sending a copy via mail, facsimile, or e-mail. *Id.*; *cf.* 52 U.S.C. § 21083(a)(5)(A)(iii). If applicants verify their information by election day, they are registered and may cast a regular ballot. § 97.053(6), Fla. Stat. If not, applicants may cast a provisional ballot, which will be counted "if the applicant[s] presen[t] evidence to the supervisor of elections sufficient to verify the authenticity of the[ir] [information provided] . . . no later than 5 p.m. of the second day following the election." *Id.* The statute is facially neutral, imposes at most a minor inconvenience in the rare circumstance an applicant's numbers do not match those on file, and provides the applicant plenty of time to verify his or her identity.

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Plaintiff disagrees with the Florida Legislature's policy choice to require applicants to verify their identity and eligibility before registering to vote. It insists that the verification process, which it calls the "exact match protocol," imposes an illegal precondition to voting that disenfranchises tens of thousands of eligible – and primarily minority – Florida voters. It claims the process violates the First and Fourteenth Amendments because it imposes an undue burden on Floridians' right to vote (Count I), § 8 of the National Voter Registration Act because the requirements are neither uniform nor nondiscriminatory (Count II), and § 2 of the Voting Rights Act of 1965 because the protocol denies black Floridians the right to vote on account of their race or color. Plaintiff asks the Court for sweeping relief: declare the State's verification process invalid, enjoin Defendants from holding future applications pursuant to the voter verification statute, and summarily approve all applications pending under the statute.

The Complaint, however, has multiple threshold flaws. The first is standing. Plaintiff

lacks associational standing because it does not identify a member harmed by the voter verification statute. It lacks organizational standing because it does not show that the statute directly interferes with its "core business activit[y]" of registering Floridians to vote. Plaintiff lacks standing generally because the Complaint does not trace its alleged injury to the Department or show that a favorable judgment will redress its harm. And as an organization without the right to vote, Plaintiff lacks prudential standing to assert the voting rights of others.

In addition, the Complaint fails to state a claim on all counts. As to Count I, Plaintiff asserts a facial challenge but cannot show that the voter verification statute is unconstitutional in all circumstances. Count II fails to state a claim under § 8 of the National Voter Registration Act (NVRA) because that section does not apply to voter registration programs like the voter verification statute and the Complaint does not plausibly allege that the statute is non-uniform or discriminatory. Last, Count III fails because it does not show that Florida's voter registration process is not "equally open" to minority voters. For each reason, the Court should dismiss the Complaint.

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STANDARD OF REVIEW

To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face" and contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (citations omitted). Courts must "assume the veracity of well-pleaded factual allegations," but may not credit allegations in the form of "labels and conclusions." *Newbauer v. Carnival Corp*., 26 F.4th 931, 934 (11th Cir. 2022) (cleaned

up). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

ARGUMENT

I. Plaintiff Lacks Standing Because the Complaint Does Not Allege an Injury in Fact, Cannot Trace Any Injury to the Department or Show Redressability, and Cannot Assert the Rights of Third Party Voters.

Federal courts resolve cases or controversies. Art. III, § 2, U.S. Const. "Absent a justiciable case or controversy between interested parties," courts lack the "power to declare the law." *Wood v. Raffensperger*, 981 F.3d 1307, 1313 (11th Cir. 2020) (citation omitted). "To have a case or controversy, a litigant must establish that he has standing, which requires proof of three elements," namely "(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citations omitted). Organizations can establish their injury in fact in two ways: "(1) through [their] members (i.e., associational standing)" or "(2) through [their] own injury in fact that satisfies the traceability and redressability elements [i.e., organizational standing]." *Ga. Ass'n of Latino Elected Offs. v. Gwinnett Cnty. Bd. of Registration & Elections* (*GALEO*), 36 F.4th 1100, 1114 (11th Cir. 2022).

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1. <u>Plaintiff does not have associational standing because it does not specifically identify its members</u>.

"To establish associational standing, an organization must prove that its members would otherwise have standing to sue in their own right." *Jacobson*, 974 F.3d at 1249 (citation omitted). This means that "at least one member meets the three requirements of individual standing." *Sierra Club v. Tenn. Valley Auth.*, 430 F.3d 1337, 1344 (11th Cir. 2005). Thus, organizations must identify "at least one member who can establish an

actual or imminent injury." *Ga. Republican Party v. Sec. & Exch. Comm'n*, 888 F.3d 1198, 1204 (11th Cir. 2018). Plaintiff need not "identify affected members by their legal names," *Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 773 (11th Cir. 2024), but must make "specific allegations establishing that at least one identified member had suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009); *see also, e.g.*, *Ga. Republican Party*, 888 F.3d at 1203 (organization lacked standing because it "failed to allege that a specific member will be injured by the rule" and "offer[ed] no evidence to support such an allegation").

Plaintiff alleges that it "currently has more than 118,000 members nationwide" and "[m]ore than 66,000 of [its] members currently reside in Florida." Compl. ¶ 17. It claims those members "include individuals who have been impacted or may in the future be impacted by the 'exact match' protocol." *Id.* at ¶ 18. But the Complaint "fail[s] to allege that a specific member will be injured by the [statute]," and "certainly offers no evidence to support such an allegation." *Ga. Republican Party*, 888 F.3d at 1203. Abstract claims of harm to unknown people do not establish associational standing. *Jacobson*, 974 F.3d at 1249 (organization lacked standing because it "failed to identify any of its members, much less one who will be injured"); *Cf. S. River Watershed All.*, *Inc. v. Dekalb County*, 69 F.4th 809, 820 (11th Cir. 2023) (organization had associational standing because it "identif[ied] one specific member, plaintiff Echols, who ha[d] suffered a cognizable injury").

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2. <u>Plaintiff does not have organizational standing because the voter verification statute does not harm its core business.</u>

Organizations can "sue on their own behalf for injuries they sustained." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982). To establish this "organizational" standing, entities must satisfy the same standards for injury in fact, causation, and

redressability that apply to individuals. *Id.* at 378-79. Thus, organizations must allege that they suffer "actual present harm" or the "threat of imminent harm." *City of S. Miami v. Governor of Fla.*, 65 F.4th 631, 638 (11th Cir. 2023). Organizations often do so through a diversion of resources theory. *Id.* Under this theory, an organization suffers actual harm "if the defendant's illegal acts impair [the organization's] ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." *Jacobson*, 974 F.3d at 1250. But organizations cannot "spend [their] way into standing simply by expending money to gather information and advocate against the defendant's action." *FDA v. All. for Hippocratic Medicine*, 602 U.S. 367, 394 (2024). Otherwise, "all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." *Id.* at 395.

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Rather, organizational plaintiffs must show that they diverted their resources to counteract defendants' actions that "directly affected and interfered with [their] core business activities – not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer." *Id.* at 395. Here, Plaintiff must show that it devoted resources to combat the voter verification statute because that law directly interferes with its efforts to "conduct[] massive voter registration, voter education, voter engagement, and election protection programs in Florida." Compl. ¶ 16.

A. Plaintiff does not make this showing. It alleges that the voter verification statute "forc[es] Florida Rising to divert resources to resolve related voter-registration problems for Floridians trying to register to vote." *Id.* at ¶ 19. This includes "launch[ing] an outreach program" and "deploy[ing] staff, volunteers, and other resources" to contact those applicants whose "applications have been denied or placed in an 'unverified' status due

to a failure to meet the 'exact match' requirements." *Id.* at ¶ 20. And it claims that diverting those resources to "resolve related voter-registration problems" "frustrates a core component of Florida Rising's mission by interfering with its ability to expand democracy in Florida." *Id.* at ¶ 19.

But neither the voter verification statute nor Plaintiff's alleged diversions in response interfere with this goal. In fact, they further it. Indeed, Plaintiff acknowledges that, "in connection with the [outreach] program, [it has] been assisting impacted voter registration applicants to navigate the barrier to registration erected by the 'exact match' process so that they can vote." *Id.* at ¶ 20. But Plaintiff's outreach program *promotes* its "massive voter registration, voter education, voter engagement, and election protection programs in Florida" and thereby supports its "mission to increase the voting and political power of marginalized people and excluded constituencies." *Id.* at ¶ 16. *Cf. Havens Realty*, 455 U.S. at 378 (housing advocacy organization had standing because defendant's practices "perceptibly impaired [its] ability to provide counseling and referral services for low- and moderate-income homeseekers"). Thus, Plaintiff does not establish diversion of resources standing. At most, Plaintiff alleges "simply a setback to [its] abstract social interests." *Id.; All. for Hippocratic Medicine*, 602 U.S. at 394.

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B. Even if the diversions interfered with "core business activities," Plaintiff's allegations do not meet the other requirements of organizational standing.

First, organizational plaintiffs "must explain where [they] would have to 'divert resources away *from* in order to spend additional resources on combating' the effects of the defendant's alleged conduct." *GALEO*, 36 F.4th at 1114. Indeed, in those cases where the Eleventh Circuit has found diversion of resources standing, the organizational

plaintiffs identified specific activities they ended, or otherwise would have conducted, but for the diversion. For example, in *Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1260 (11th Cir. 2012), the Eleventh Circuit held that an immigration organization had standing because it alleged that it "cancelled citizenship classes to focus" its "volunteer time and resources to educating affected members of the community and fielding inquiries" about the challenged law. *See also, e.g.*, *GALEO*, 36 F.4th at 1115; *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009); *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008).

Plaintiff, on the other hand, does not allege *from where* it diverted its resources to comply with the voter verification statute. Rather, it claims that responding to the statute "has required [it] to deploy staff, volunteers, and other resources that would otherwise be devoted to the organization's core voter registration, voter education, and get-out-the-vote work." Compl. at ¶ 20. This vague allegation is not enough. *See Jacobson*, 974 F.3d at 1250 (plaintiffs did not establish injury based on diversion of resources because they did not "explain[ ] what activities [they] would divert resources away *from* in order to spend additional resources on combatting the [challenged statute]"). Indeed, if an organization could show standing simply by identifying projects it undertakes and alleging that it has finite resources, then practically every organizational plaintiff would have organizational standing in every case. *Cf. Vote.Org v. Callanen*, 89 F.4th 459, 471 (5th Cir. 2023) (plaintiff had standing because it "provided substantial evidence that, because of the [challenged law], it had to expend additional time beyond the routine activities of multiple departments and divert resources away from particular projects") (citation omitted).

Second, an organizational plaintiff must demonstrate "*both* that it has diverted its

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resources *and* that the injury to the identifiable community that the organization seeks to protect is itself a legally cognizable Article III injury that is closely connected to the diversion." *City of S. Miami*, 65 F.4th at 638–39. In other words, plaintiffs must allege concrete harm to an identifiable community – not speculation based on "mere conjecture about possible governmental actions." *Id.* at 639 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 420 (2013)) (marks omitted). For instance, in *Georgia Latino All.*, the plaintiff organizations diverted their volunteers from teaching citizenship classes to educating their members about how to deal with a new immigration law. *See* 691 F.3d at 1260. The diversion was a concrete injury because the members faced a "credible threat of detention" under the new immigration law, which forced the organizations to divert their resources to protect them from this imminent harm. *Id.* at 1258.

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Recall that applicants can register to vote in Florida online through the Department of State's secure portal, § 97.0525(2), Florida Statutes; electronically through the DHSMV, § 97.057, Florida Statutes; or via mail or hand delivery to any supervisor of elections, the Department of State's Division of Elections, a driver license office, a voter registration agency, or an armed forces recruitment office, among other places, § 97.053(1), Fla. Stat. The Department's regulations also provide that "[a]ny valid application for new registration that is complete and *submitted other than electronically through DHSMV* shall be routed . . . for verification" of the applicant's information pursuant to § 97.053(6). Fla. Admin. Code R. 1S-2.039(5) (emphasis added).

In other words, the voter verification statute applies *only* to applications submitted online through its secure portal or delivered to one of the statutorily enumerated locations. But the Complaint says nothing about how Plaintiff's members plan to register. Thus,

Plaintiff does not plausibly allege that its members face a credible threat of their application being subjected to – and possibly denied by – the voter verification process. Rather, Plaintiff alleges that it diverted its resources to address "fears of hypothetical future harm that is not certainly impending." *City of S. Miami*, 65 F.4th at 638–39 (quoting *Clapper*, 568 U.S. at 416). At best, Plaintiff's diversion of resources "amounts to a self-imposed injury 'based on speculative fears of future harm.'" *Id.* at 640. "Speculative harms are no more cognizable dressed up as an organizational injury than as an associational one." *Id.* And "an organization can no more spend its way into standing based on speculative fears of future harm than an individual can." *Id.* at 639.

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3. Plaintiff does not have standing because it cannot trace the alleged injury to the Department or show that a favorable judgment will redress that injury.

Plaintiff also does not establish the second element of Article III standing – causation. To establish causation, a plaintiff "must show a 'causal connection' between [its] injury and the challenged action of the defendant . . ., as opposed to the action of an absent third party." *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019) (en banc) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). And it "must show that it is likely, not merely speculative, that a favorable judgment will redress [its] injury." *City of S. Miami*, 65 F.4th at 640 (citation omitted). Plaintiff does not show either requirement because the Department does not cause the alleged injury, and thus a judgment against it will not redress any resulting harm.

Plaintiff complains that the database the Department uses to verify applicants' personal information is "error-prone" and thereby "routinely produce[s] false and inconsistent results." Compl. ¶ 7; *see also* ¶¶ 34-39. But Plaintiff fails to mention that HAVA demands the Department conduct § 97.035(6)'s verification process and requires

the Department to use the database it uses. *See* 52 U.S.C. § 21083(a)(5) ("Verification of Voter Registration Information"); *id.* at (a)(5)(B) (requiring the Department to use DHSMV's and SSA's databases); *Ohio Republican Party v. Brunner*, 544 F.3d 711, 713-14 (6th Cir. 2008) (en banc) (denying motion to vacate TRO requiring Ohio Secretary of State to reactivate verification process required by HAVA).

A declaration invalidating § 97.035(6), Florida Statutes, would have no effect on federal law. Thus, Plaintiff and its members will suffer the alleged harm even if they obtain their requested relief because federal law will still require the Department to verify applicants' personal information. The Eleventh Circuit "ha[s] held traceability to be lacking if the plaintiff would have been injured in precisely the same way without the defendant's alleged misconduct." *Walters v. Fast AC, LLC*, 60 F.4th 642, 650 (11th Cir. 2023) (citation omitted). In other words, "a plaintiff lacks standing to sue over a defendant's action if an independent source would have caused him to suffer the same injury." *Id.* at 651 (citation omitted). That individual source here is federal law. Thus, Plaintiff cannot show either traceability or redressability as to the Department. *See Jacobson*, 974 F.3d at 1254.

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Plaintiff also cannot show redressability against the Department because it asks this Court to "place otherwise eligible applicants on the voter rolls in active status if their voter registration application was denied solely due to a failure to satisfy the 'exact match' requirement." Compl. ¶ 109(c). Only the supervisors perform this task. § 97.053(6), Fla. Stat. ("If the applicants provide[] the necessary evidence [to verify their information], the supervisor shall place [their] name on the registration rolls as an active voter."). Thus, to redress its harm, Plaintiff must join the other 63 supervisors of elections as indispensable parties. Fed. R. Civ. P. Rule 19(a) ("A person . . . must be joined as a party if . . . in that

person's absence, the court cannot accord complete relief among existing parties."); *see Lujan*, 504 U.S. at 571 (holding plaintiffs lacked redressability against Defendant Secretary of the Interior because it could not implement requested remedy).

4. Plaintiff lacks prudential standing to challenge the voter verification statute.

Last, even assuming Plaintiff identified one of its members with an actual injury, properly alleged diversion of its resources, or traced its injury to the Department, Plaintiff would still lack standing to challenge the voter verification statute on behalf of third parties.

Plaintiff's claims each invoke the right to vote. *See, e.g.*, Compl. ¶¶ 1, 84. But organizations do not have that right. *See Vote.Org v. Callanen*, 39 F.4th 297, 303 (5th Cir. 2022) (*Callanen II*) ("[A]n organization plainly lacks the right to vote."). A plaintiff "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). The Supreme Court, however, has crafted a prudential exception to this traditional rule against third party standing whereby plaintiffs may assert the rights of third parties upon "two additional showings": (1) the plaintiff "has a 'close' relationship with the person who possesses the right," and (2) "there is a 'hindrance' to the possessor's ability to protect his own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). This inquiry is distinct from, and in addition to, the Article III standing analysis. *Kowalski*, 543 U.S. at 129. Thus, even if Plaintiff had Article III standing by specifically identifying a member likely to be harmed by the voter verification statute, or sufficiently alleging diversion of resources, it could not assert the voting rights of its member(s) without establishing third party standing. Plaintiff does not make either showing. In fact, Plaintiff does not even try. *See Warth*, 422 U.S. at 518.

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First, a relationship between a plaintiff and an absent third party is sufficiently close if "the former is fully, or very nearly, as effective a proponent of the right as the latter." *Powers*, 499 U.S. at 413 (citation omitted). Exemplary relationships include those between doctors and patients, employers and employees, and vendors and customers.[2] On the other hand, *Kowalski* held that the relationship between criminal defense attorneys and "as yet unascertained . . . criminal defendants who will request, but be denied, appellate counsel under the statute" was "no relationship at all." *Kowalski*, 543 U.S. at 125-26 (citations omitted). In the same way, the third parties with whom Plaintiff would claim a close relationship are "as yet unascertained" Floridians whose applications may someday be denied pursuant to the voter verification statute. Plaintiff cannot sue simply because it claims an injury from the possible future denial of someone else's right to vote.

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Courts also consider a plaintiff's monetary incentives for asserting a third party's rights when determining whether that plaintiff will advocate as effectively as the third parties. *See, e.g.*, *Young Apartments, Inc. v. Town of Jupiter*, 529 F.3d 1027, 1042 (11th Cir. 2008) (apartment complex's "pursuit of economic damages" gave it a "concrete interest in the outcome of the issue in dispute" that was "sufficient to ensure that it would be an effective advocate") (cleaned up). Plaintiff, however, does not allege that it charges any fees for the registration tools or assistance they provide. Thus, it is worse off even than the attorneys in *Kowalski*, who at least demonstrated a potential vendor-customer relationship. *Accord Callanen II*, 39 F.4th at 304.

Likewise, courts consider "the causal connection between the [plaintiff]'s injury and

[2] *See June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2118–19 (2020); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248, 1252 (5th Cir. 1995); *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 216 (4th Cir. 2020), *as amended* (Aug. 31, 2020) (collecting cases).

the violation of the third parties' constitutional rights." *Mata Chorwadi, Inc. v. City of Boynton Beach*, 66 F.4th 1259, 1266 (11th Cir. 2023). When a law imposes a "legal duty" on the plaintiff that necessarily deprives a third party of his or her constitutional rights, the plaintiff may stand in the shoes of the third party. *Id.*; *see Craig v. Boren*, 429 U.S. 190, 196–97 (1976) (vendor prohibited from selling beer to males under age 21 had third-party standing to bring equal protection claims on their behalf). Here, however, the voter verification statute imposes no legal duty on Plaintiff.

Second, nothing is stopping unregistered Floridians allegedly injured by the voter verification statute from protecting their own rights by joining this lawsuit or filing their own. *See Kowalski*, 543 U.S. at 130-31 (finding indigent prisoners capable of advancing their own constitutional rights via *pro se* litigation); *Callanen II*, 39 F.4th at 304 (expressing "little doubt" that voters injured by [the challenged law] "could protect their rights").

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II. The Complaint Fails to State a Claim for Undue Burden Under the First and Fourteenth Amendments.

Count I alleges that the voter verification statute, by preventing applicants from registering to vote until their information can be verified, and requiring those whose information does not match to cure the discrepancy, "imposes severe burdens on Floridians' fundamental right to vote." Compl. ¶ 86. But this claim has two threshold flaws. First, it alleges a facial challenge but does not, and cannot, show that the statute is unconstitutional in all circumstances. Second, it invokes the rights of a small group of voters rather than voters generally, as the *Anderson/Burdick* test requires.

1. <u>Plaintiff's facial challenge to the voter verification statute fails to state a claim because it cannot show that the statute is invalid under all circumstances.</u>

Facial challenges, as distinguished from as-applied challenges, "seek[] to

invalidate a statute or regulation itself." *Indigo Room, Inc. v. City of Fort Myers,* 710 F.3d 1294, 1302 (11th Cir. 2013) (citation omitted). "[W]hen a plaintiff mounts a facial challenge to a statute or regulation, the plaintiff bears the burden of proving that the law could never be applied in a constitutional manner." *DA Mortg., Inc. v. City of Miami Beach,* 486 F.3d 1254, 1262 (11th Cir. 2007). "[T]he challenger must establish that no set of circumstances exists under which the Act would be valid." *U.S. v. Salerno,* 481 U.S. 739, 745 (1987).

Plaintiff asks this Court to "declar[e] that the Florida 'exact match' voter registration protocol violates . . . the fundamental right to vote under the First and Fourteenth Amendments" and enjoin its enforcement against all applicants. Compl. ¶¶ 108-09. Where, as here, "an injunction . . . reach[es] beyond the particular circumstances of th[is] plaintiff," it must "satisfy standards for a facial challenge to the extent of that reach." *Doe v. Reed,* 561 U.S. 186, 194 (2010). Plaintiff does not meet that high bar.

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Courts apply the *Anderson/Burdick* test to undue burden claims. The test asks courts to "weigh 'the character and magnitude of the asserted injury to the right [to vote] . . . that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,'" considering "'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Laws imposing "severe burdens" on a plaintiff's rights "must be narrowly tailored and advance a compelling state interest." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). "But when a state election law provision imposes only reasonable, nondiscriminatory restrictions . . . the State's important regulatory interests are generally sufficient to justify the restrictions." *Burdick,* 504 U.S. at 433 (marks omitted).

The Northern District of Florida's opinion in *Florida NAACP v. Browning* is directly on point. 569 F.Supp.2d 1237, 1256-57 (N.D. Fla. 2007). There, plaintiffs brought the same undue burden claim challenging the same voter verification statute. *Id.* The Northern District of Florida did not buy it. The court found that the claim was not likely to succeed on the merits because the statute did not impose a "severe" burden and "unquestionably promot[ed] important regulatory interests." *Id.*; *see also Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp.3d 1128, 1220 (N.D. Ga. 2022) (rejecting undue burden claim challenging Georgia's "exact match" protocol because "the burden on voters is relatively low" and "the State's justifications outweigh any potential burdens on voters"). The same analysis applies here, and appellate courts have upheld election regulations imposing similar or even greater burdens than the voter verification statute.[3]

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In addition, to the extent Plaintiff claims that data errors burden applicants, the Department's own rules significantly reduce any such burden. As Plaintiff acknowledges, each time an applicant's information does not match the number on file, the Department's Bureau of Voter Registration Services conducts a hand review to "check for data entry errors using the scanned image of the application in the [Florida Voter Registration System], and a comparison of information available from DHSMV." Fla. Admin. Code R. 1S-2.039(5)(a)(2). "If a data entry error occurred, the BVRS shall correct the application

[3] *See Gonzalez v. Arizona*, 485 F.3d 1041, 1050 (9th Cir. 2007) (law requiring applicants to submit a verifiable driver license number or other evidence of citizenship with their registration applications did not impose a severe burden because a "vast majority of Arizona citizens . . . already possess at least one of the documents sufficient for registration)"; *Crawford v. Marion County Election Board*, 553 U.S. 181, 199 (2008) (law requiring in-person voters to present a government-issued photo ID did not unduly burden applicants because those who did not provide the identification could cast a provisional ballot that would be counted if they presented it after the election).

record and resubmit the record to DHSMV or SSA for verification." *Id.*

Moreover, the alleged burden applies only under certain circumstances. Verifying applicants' personal information burdens their right to vote only if they (1) have that right – i.e., are eligible to vote and (2) provide accurate information that does not match the numbers on file with DHSMV or SSA through no fault of their own. If an applicant is not eligible to vote, then there is no right to burden. Likewise, if the applicant is eligible but provides incorrect information on the application, his or her own mistake caused the burden. If the applicant's information is accurate and matches the numbers on file, he or she is approved and placed on the voter rolls. Thus, Plaintiff has not – and cannot – allege facts sufficient to support the facial challenge it brings.

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2. Plaintiff does not state a claim under *Anderson/Burdick* because the Complaint invokes only the rights of rejected applicants, not the rights of all Florida voters.

Anderson/Burdick is not a constitutional catch-all. The test requires courts to first "identify a burden before [they] can weigh it." *Crawford v. Marion County Election Board*, 553 U.S. 181, 205 (Scalia, J., concurring). Once a court identifies a burden on the right to vote, it "consider[s] the laws and their reasonably foreseeable effect on *voters generally*," not on a subset of the electorate. *Id.* at 206. That is because *Anderson/Burdick* requires courts to "weigh these burdens against the state's interests by looking at the whole electoral system," consider provisions that make voting easier, and avoid "substitution of judicial judgment for legislative judgment" along the way. *Luft v. Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020); *cf. Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 671 (2021) (holding that, in the context of § 2 of the VRA, "courts must consider the opportunities [to vote] provided by a State's entire system of voting"). Indeed, the Supreme Court's subsequent cases "refute the view that individual impacts are relevant

to determining the severity of the burden it imposes," and thereby "follo[w] *Burdick's generalized* review of nondiscriminatory election laws." *Crawford*, 553 U.S. at 206 (Scalia, J., concurring) (emphasis added).

Here, the alleged burden applies only to a narrow band of potential voters – those whose information on their applications did not match their numbers on file with the DHSMV or SSA. Plaintiff alleges that the voter verification statute unduly burdens these applicants because they "are not allowed to cast a ballot unless they overcome burdensome bureaucratic hurdles," and those "who do not provide the required information are deemed 'unverified' and denied the right to vote." Compl. ¶ 2. In other words, under Plaintiff's theory, the voter verification statute burdens only the small percentage of applicants whose information cannot be verified. *See* Compl. ¶¶ 55, 57 (estimating the number of eligible applicants who had their applications denied because of the voter verification statute at 43,000 within twenty-six counties, or only ***.3%*** of the 13,045,645 eligible registered voters in those counties). Eligible applicants that provide verifiable information suffer no burden. Thus, Plaintiff seeks to vindicate only the rights of rejected applicants, rather than the rights of Florida voters generally as *Anderson/Burdick* requires. Such allegations do not state an undue burden claim. *See Crawford*, 553 U.S. at 202-03 (concluding Indiana law did not impose an undue burden because "[w]hen we consider only the statute's broad application to all Indiana voters we conclude that it 'imposes only a limited burden on voters' rights'").

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III. The Complaint Fails to State a Claim Under § 8 of the NVRA.

A. For starters, § 20507(b) does not apply to voter registration laws. It regulates the steps officials may take to "ensur[e] the maintenance of an accurate and current voter

registration roll." 52 U.S.C. 20507(b). Voter rolls are centralized lists of every registered voter. *See id.* § 21083(a). Thus, for Plaintiff to state a claim under § 20507(b), the voter verification statute must regulate how the Department "ensures the maintenance of," or "maint[ains]," the list of registered voters. *Id.* § 20507(b).

Statutory interpretation "begins and ends with the statutory text." *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019). The text of the NVRA does not define either "maintenance" or "maintain." When a statutory term is undefined, courts give the term its ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). To ascertain the ordinary meaning of undefined terms, courts often turn to dictionaries in existence around the time of enactment. *Paresky v. United States*, 995 F.3d 1281, 1285 (11th Cir. 2021). Section 20507(b) appeared in the original 1993 version of the NVRA. Contemporaneous dictionaries define the word "maintenance" as "[t]he work of keeping something in proper condition," *Maintenance*, AMERICAN HERITAGE DICTIONARY (3d ed. 1992), or "in a state of repair or efficiency," *Maintenance*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). Similarly, according to contemporaneous legal dictionaries, "maintain" means to "keep up" or "in good order." *Maintain*, BLACK'S LAW DICTIONARY (6th ed. 1990); *Maintain*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992). Thus, § 20507(b) applies to laws that keep the list of registered persons "in proper condition" or "in good order." These definitions match § 20507(b)'s title: "[*c*]*onfirmation* of voter registration." But they do not match the voter verification statute, titled "[a]cceptance of voter registration applications." § 97.053, Fla. Stat.[4]

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[4] The statute's legislative history is consistent with this plain meaning. *See In re BFW Liquidation, LLC*, 899 F.3d 1178, 1190 (11th Cir. 2018) (noting that statutory history may "bolster[] our conclusion" about an unambiguous text). The Senate committee's report on

Applying this ordinary meaning, the Supreme Court recognizes § 20507(b) as a limit on "state removal programs." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 764 (2018). And the District of Arizona recently found that "[s]ection 8(b) does not apply to state programs regarding individuals not yet registered to vote. Section 8(b), which expressly addresses confirming rather than soliciting voter registration, speaks to ensuring the *maintenance*, not the enlargement, of current voter registration rolls." *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1077, 1095 (D. Ariz. 2023). Thus, the Complaint fails to state a claim under § 20507(b) of the NVRA.

B. But even if § 20507(b) applied to voter registration laws, Count II still fails to state a claim because the Complaint does not show that the voter verification statute is non-uniform or discriminatory.[5] *See* 52 U.S.C. § 20507(b)(1).

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Looking again to the plain text, "uniform" is defined as "[c]onforming to one rule, mode, pattern, or unvarying standard" and "applicable to all places or divisions of a country." *Uniform*, BLACK'S LAW DICTIONARY (6th ed. 1990). Indeed, the Supreme Court has said that tax statutes are uniform when they "operate[ ] with the same force and effect in every place where the subject of it is found." *Edye v. Robertson*, 112 U.S. 580, 594 (1884). And the Senate committee's report on the NVRA states that "[t]he term 'uniform' is intended to mean that any purge program or activity must be applied *to an entire jurisdiction*." S. REP. No. 103-6, 103rd Cong., at 31 (1993).

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the NVRA demonstrates that § 20507(b) was intended "to prohibit selective or discriminatory purge programs." S. REP. No. 103-6, 103rd Cong., at 31 (1993) ("Subsection (b) sets forth the standards for the confirmation of voter registration . . . The purpose of this requirement is to prohibit selective or discriminatory purge programs.").

[5] Section 20507(b)(1) also provides that the "program or activity" must be "in compliance with the Voting Rights Act of 1965." Count II fails to state a claim under this requirement for the reasons demonstrated in Section IV.

As for "nondiscriminatory," the Supreme Court strongly suggested in *Husted* that claims brought under § 20507(b)(1) must show both discriminatory effect *and* discriminatory intent. 584 U.S. at 779 (concluding plaintiff did not state a claim under § 20507(b)(1) because neither he nor "Justice SOTOMAYOR has . . . pointed to any evidence in the record that Ohio instituted or has carried out its program with discriminatory intent").

Applying these sources makes clear that to state a claim under § 20507(b)(1), Plaintiff must show *both* that the voter verification statute does not apply equally across the State of Florida *and* that the Department applies the statute with the intent to discriminate against black voters. Plaintiff cannot make the first showing because § 97.053(6), Florida Statutes, is a general law. *See* Ch. 2005-278, Laws of Fla., § 6 (2005); *see also Venice HMA, LLC v. Sarasota Cnty.*, 228 So. 3d 76, 80 (Fla. 2017) ("A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state.") (citation omitted). And it does not make the second showing because the Complaint does not allege a single fact suggesting that Defendants intend to discriminate against a minority group.

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Accordingly, Count II must be dismissed – both because § 20507(b) does not apply to voter registration policies like the voter verification statute and because the Complaint does not plausibly allege that the statute violates the NVRA.

IV. The Complaint Fails to State a Claim Under § 2 of the VRA.

Section 2(a) of the Voting Rights Act (VRA) provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied . . . which results in a denial or abridgement of the right of any citizen of the United States

to vote on account of race or color." 52 USC 10301(a). But unlike discrimination claims brought under the Fourteenth and Fifteenth Amendments, which require proof of both discriminatory intent and actual discriminatory effect, § 2(a) requires only proof of discriminatory "results." *Greater Birmingham Ministries v. Secretary of State*, 992 F.3d 1299,1329 (11th Cir. 2021) (quoting *Chisom v. Roemer*, 501 U.S. 380, 403–04 (1991)). Despite this broad language, "[s]ection 2 does not prohibit all voting restrictions that may have a racially disproportionate effect." *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1228 (11th Cir. 2005). Section 2 is an "equal-treatment requirement," not an "equal-outcome command." *Frank v. Walker*, 768 F.3d 744, 754 (7th Cir. 2014).

Plaintiffs must show that the challenged law "*caused* the denial or abridgment of the right to vote on account of race." *Greater Birmingham*, 992 F.3d at 1330. Put another way, Plaintiff must show that racial bias *caused* the disparity between the percentage of white and black Floridians whose registration applications were rejected under the voter verification statute. *Nipper v. Smith*, 39 F.3d 1494, 1515 (11th Cir. 1994) (stating that "to be actionable," § 2 claims must show that the challenged voting practice "depends on race or color, not . . . some other racially neutral cause," to preclude minority voters from equally participating in the political process).

Under § 2(b), this analysis turns on whether, based on the totality of circumstances, "[black Floridians] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id. Brnovich* clarified that voters have less of an opportunity to participate in the electoral process where voting is not "equally open" to minority groups, which means that there are "restrictions as to who may participate," such as requirements of "special status,

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identification, or permit[s] for entry or participation." 594 U.S. at 667-68. (citations omitted). Thus, to state a claim under § 2(a), Plaintiff must plausibly allege that the voter registration process is not "equally open" because Florida law imposes more burdensome requirements upon black Floridians. *See id.* at 668 ("Putting these terms together, it appears that the core of § 2(b) is the requirement that voting be 'equally open.'").

Plaintiff, however, simply recites § 2(b)'s text and summarily concludes that the voter verification statute "denies [black Floridians] an equal opportunity to register and to vote in Florida elections." Compl. ¶ 103. That is not enough. *See Bell Atl. v. Twombly*, 550 U.S. 544, 555 (2007) ("[L]abels and conclusions, and a formulaic recitation of the elements of a cause of action" do not state a claim). Further, Plaintiff does not show, or even allege, that the voter registration process is not "equally open" to minority voters. *See Lee v. Virginia State Bd. of Elections*, 843 F.3d 592, 600 (4th Cir. 2016) (affirming judgment that Virginia photo-ID law does not violate § 2 because "Virginia allows everyone to vote and provides free photo IDs to persons without them" and thus "provides every voter an equal opportunity to vote"); *Frank*, 768 F.3d at 755 (similar).

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Instead, Plaintiff alleges that the voter verification statute has a "disparate and discriminatory impact on Black citizens and other citizens of color." Compl. ¶ 74; *see id.* ¶ 60. In support of this claim, Plaintiff points to voter registration data from Miami-Dade, Broward, Duval, and Orange Counties. But highlighting a racial disparity between those rejected by the voter verification statute does not state a claim under § 2. *See Gonzalez v. Arizona*, 677 F.2d 383, 405 (9th Cir. 2012) (en banc) ("[A] § 2 challenge based purely on a showing of some relevant statistical disparity between minorities and whites, without

any evidence that the challenged voting qualification causes that disparity, will be rejected.") (citation omitted).

Florida NAACP v. Browning is again directly on point. The Northern District dismissed the plaintiffs' § 2 claim because "[s]ection [2] claims must do more than simply demonstrate a relevant disparity between white voters and minority voters." 2007 WL 9697653, Case No. 4:07-cv-402, at *7.[6] Indeed, the court noted that "[t]he process of registering to vote [in Florida] is open to participation by all citizens." *Id.* Thus, "[i]t is the unmatched citizens that will likely be disenfranchised by this law." *Id.* But "[t]he fact that those unmatched citizens are more likely to be members of ethnic minorities does not, without more, demonstrate discriminatory intent or racial bias in the operation of [the voter verification statute]." *Id.*; *see also Fair Fight Action*, 634 F. Supp.3d at 1246 (rejecting § 2 challenge to Georgia's "exact match" protocol because "the burden on voters, disparate impact, and strength of the State's interest weigh against finding a Section 2 violation").

Plaintiff makes the same flawed same claim here. Thus, the same analysis and conclusion applies: Plaintiff's failure to allege a "causal connection between racial bias and disparate effect necessary to make a vote-denial claim" dooms Count III. *Greater Birmingham*, 992 F.3d at 1330-31.

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CONCLUSION

For these reasons, this Court should dismiss the Complaint.

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[6] The Eleventh Circuit's interlocutory opinion reversed this order's injunction on the HAVA counts but did not affect its dismissal of the § 2 VRA claim because the plaintiffs did not appeal that issue. *See* 569 F.Supp.2d at 1241-42.

Dated: December 2, 2024

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LOCAL RULE 3.01(g) CERTIFICATION

I HEREBY CERTIFY that Secretary Byrd by counsel has conferred with Florida Rising Together, Inc. via video conference on December 2, 2024. The parties do not agree on the resolution of all or part of the motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's CM/ECF system, which provides notice to all parties, on December 2, 2024.

/s/ *Samuel F. Elliott*
Counsel for Secretary Byrd